Supreme Court, U.S.
FILED
991200 OCT 28 1999
OFFICE OF THE CLERK

No. _____

In The

Supreme Court of the United States

CHARLES HERSHFIELD, pro se,

Petitioner,

vs.

TOWN OF COLONIAL BEACH, VIRGINIA, INC. and TECHNICAL REVIEW BOARD, STATE BUILDING CODE,

Respondents.

On Petition For A Writ Of Certiorari To The Court Of Appeals Of Virginia

PETITION FOR A WRIT OF CERTIORARI

Charles Hershfield, pro se
Box 934
Dahlgren, VA 22448
(540) 663-2903

QUESTIONS PRESENTED

(1) Did the state Appeals Court err when they did not rule on the Motion to Quash?

(2) Did the state Appeals Court err when they used the word "mailing" in place of the word "service"?

PETITION FOR A WRIT OF CERTIORARI

To the Honorable Justices of the U. S. Supreme Court:

Hershfield, the pro se Appellant, is a retired person, 72 years old, and comes to you for Redress of Grievances. And the grievances are obvious and blatant violations of the right to Due Process of Law as guaranteed by the U. S. Constitution. This right was violated by the state courts of Virginia, and the matter comes to you as the court of last resort.

OPINION BELOW

The opinion of the Court of Appeals of Virginia was entered on January 19, 1999. The order of the Virginia Supreme Court denying the petition for rehearing was entered on July 30, 1999.

JURISDICTION

The jurisdiction of this Court is sought under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Due Process Clause of the Fifth Amendment of the United States Constitution:

> No person shall . . . be deprived of life, liberty, or property, without due process of law. . . .

Rule 2A:2 of the Rules of the Supreme Court of Virginia is reprinted in the Appendix at App. 5.

STATEMENT OF THE CASE

On April 6, 1996, the Town of Colonial Beach notified Hershfield that his house violated several building code requirements. Hershfield appealed those determinations to the Colonial Beach Board of Building Code Appeals, and then to the State Building Code Technical Review Board ("the Board"). The Board reversed some of the determinations and upheld others. The Board's order was sent to Hershfield on May 23, 1997, by certified mail to his last known address.

On July 26, 1997, Hershfield filed a notice of appeal to the trial court. The Town of Colonial Beach and the Board filed special pleas challenging the trial court's jurisdiction. The trial court sustained those pleas, holding that it lacked jurisdiction because Hershfield's notice of appeal was filed untimely. Hershfield also assigns error to the trial court's denial of his motion to quash the town's letter of violations for due process concerns. We do not reach that issue because the trial court lacked jurisdiction over the matter.

This Petition has two parts, argument for Motion to Quash which concerns jurisdiction, and argument concerning Due Process with regard to use of the words "mailing" versus "service." These complete arguments are contained in Opening Brief of Appellant, dated 10 Jun 98, and in Reply Brief, dated 16 Jul 98. Please refer to those arguments, and to the Appendix included with the

opening brief for supporting documents. Also, the Petition for Rehearing dated 7 Jun 99 contains relevant arguments.

The cases *Rook v. Rook*, 353 S.E.2d 756 (1987), and *Slaugther v. Commonwealth*, 284 S.E.2d 824 (1981), support Hershfield's argument that he should be heard on the matter of the Motion to Quash. Note that those cases state that void judgments may be attacked in any court at any time. Then he further argues that the Notice of Appeal was timely filed, and that the word "service" has meaning, as in "service of the final order." Service date of the final order is what begins the count of days, not the mailing date. He argues that his right to Due Process was violated.

CONCLUSION

The Appellant asks that the ruling of the Court of Appeals be vacated, or in the alternative, this matter be remanded for further consideration.

This petition for a writ of certiorari should be granted.

Respectfully submitted,

Charles Hershfield, Petitioner,
pro se
Box 934
Dahlgren, VA 22448

COURT OF APPEALS OF VIRGINIA

Present: Judges Benton, Willis and Lemons
Argued at Richmond, Virginia

CHARLES HERSHFIELD
v. Record No. 0628-98-2
TOWN OF COLONIAL BEACH AND STATE BUILDING CODE TECHNICAL REVIEW BOARD

MEMORANDUM OPINION* BY JUDGE JERE M. H. WILLIS, JR.
JANUARY 19, 1999

FROM THE CIRCUIT COURT OF WESTMORELAND COUNTY

Joseph E. Spruill, Jr., Judge

(Charles Hershfield, *pro se*). Appellant submitting on briefs.

John E. Tyler, Jr., Town Attorney, for Appellee Town of Colonial Beach.

John B. Purcell, Jr., Assistant Attorney General (Mark L. Earley, Attorney General; Richard B. Zorn, Senior Assistant Attorney General, on brief), for Appellee State Building Code Technical Review Board.

Charles Hershfield contends that the trial court erred in refusing to accept jurisdiction over his appeal from the decision of the State Building Code Technical Review

*Pursuant to Code § 17.1-413, recodifying Code § 17-1116.010, this opinion is not designated for publication.

Board. We disagree and affirm the judgment of the trial court.

On April 6, 1996, the Town of Colonial Beach notified Hershfield that his house violated several building code requirements. Hershfield appealed those determinations to the Colonial Beach Board of Building Code Appeals, and then to the State Building Code Technical Review Board ("the Board"). The Board reversed some of the determinations and upheld others. The Board's order was sent to Hershfield on May 23, 1997, by certified mail to his last known address.

On July 26, 1997, Hershfield filed a notice of appeal to the trial court. The Town of Colonial Beach and the Board filed special pleas challenging the trial court's jurisdiction. The trial court sustained those pleas, holding that it lacked jurisdiction because Hershfield's notice of appeal was filed untimely.[1]

Rule 2A:2 states, in relevant part:

> Any party appealing from a . . . case decision shall file, within 30 days after adoption of the regulation or after service of the final order in the case decision, with the agency secretary a notice of appeal signed by him or his counsel. In the event that service of a case decision upon a party is accomplished by mail, 3 days shall be added to the 30-day period. Service under this Rule shall be consistent with [Code] § 9-6.14:14

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[1] Hershfield also assigns error to the trial court's denial of his motion to quash the town's letter of violations for due process concerns. We do not reach that issue because the trial court lacked jurisdiction over the matter.

> and, if made by mail, shall be sufficient if sent by registered or certified mail to the party's last address known to the agency.

Hershfield contends that the thirty days within which he was required to file his notice of appeal began to run when he received the final order from the Board. He argues that he received the order on June 26, 1997, and had thirty days from that date, or until July 26, 1997, in which to file his notice of appeal. Nothing in the language of Rule 2A:2 supports Hershfield's argument. The rule provided him thirty days plus three days from the mailing of the order to him. Thus, the deadline for filing his notice of appeal was June 25, 1997, thirty-three days after the service of the final order by mailing. The trial court correctly declined jurisdiction, because Hershfield's notice of appeal was not filed timely.

The judgment of the trial court is affirmed.

Affirmed.

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 30th day of July, 1999.

Charles Hershfield, Appellant,

against

Record No. 990756
Court of Appeals
No. 0628-98-2

Town of Colonial Beach, et al., Appellees.

Upon a Petition for Rehearing

On consideration of the petition of the appellant to set aside the judgment rendered herein on the 24th day of May, 1999 and grant a rehearing thereof, the prayer of the said petition is denied.

A Copy,
Teste:

/s/ David B. Beach
Clerk

RULES OF SUPREME CT. OF VA.

THIS IS RULE 2A:2 AS AMENDED IN 1991, AND IS THE CURRENT RULE.

Rule 2A:2. Notice of Appeal.

Any party appealing from a regulation or case decision shall file, within 30 days after adoption of the regulation or after service of the final order in the case decision, with the agency secretary a notice of appeal signed by him or his counsel. In the event that service of a case decision upon a party is accomplished by mail, 3 days shall be added to the 30-day period. Service under this Rule shall be consistent with § 9-6.14:14 and, if made by mail, shall be sufficient if sent by registered or certified mail to the party's last address known to the agency. The notice of appeal shall identify the regulation or case decision appealed from, shall state the names and addresses of the appellant and of all other parties and their counsel, if any, shall specify the circuit court to which the appeal is taken, and shall conclude with a certificate that a copy of the notice of appeal has been mailed to each of the parties. Any copy of a notice of appeal that is sent to a party's counsel or to a party's registered agent, if the party is a corporation, shall be deemed adequate and shall not be a cause for dismissal of the appeal; provided, however, sending a notice of appeal to an agency's counsel shall not satisfy the requirement that a notice of appeal be filed with the agency secretary. The omission of a party whose name and address cannot, after due diligence, be ascertained shall not be cause for dismissal of the appeal. Any final agency case decision as described in § 9-6.14:14 shall advise the party of the time for filing a notice of appeal under this Rule.

THIS IS RULE 2a:2 PREVIOUS TO THE YEAR 1991.

Rule 2A:2. Notice of Appeal.

Any party appealing from a regulation or case decision shall file, within 30 days after adoption of the regulation or entry of the final order in the case decision, with the agency secretary a notice of appeal signed by him or his counsel. The notice of appeal shall identify the regulation or case decision appealed from, shall state the names and addresses of the appellant and of all

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